

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-1266

ROBERT D. STEARNS,

Plaintiff - Appellant,

v.

SHELLPOINT MORTGAGE SERVICING; THE BANK OF NEW YORK
MELLON, fka The Bank of New York, as Trustee for the certificate holders of
CWALT, Inc., Alternative Loan Trust 2007-OAS, mortgage pass-through
certificates, series 2007-OA8 (“Bony”),

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Alexandria. Anthony J. Trenga, District Judge. (1:16-cv-01399-AJT-MSN)

Submitted: June 15, 2017

Decided: June 26, 2017

Before DUNCAN, AGEE, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Robert D. Stearns, Appellant Pro Se. J.P. McGuire Boyd, Jr., WILLIAMS MULLEN,
Richmond, Virginia, James Robert Germano, WILLIAMS MULLEN, McLean, Virginia,
for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert D. Stearns appeals the district court's order granting Defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss Stearns' civil action for failure to state a claim. In its dispositive order, the district court explained that it granted the motion to dismiss for the reasons expressed at the motion hearing, but the record does not contain a transcript of that hearing. An appellant has the burden of including in the record on appeal a transcript of all parts of the proceedings material to the issues raised on appeal. Fed. R. App. P. 10(b); 4th Cir. R. 10(c). An appellant proceeding on appeal in forma pauperis is entitled to transcripts at government expense only in certain circumstances. 28 U.S.C. § 753(f) (2012). By failing to produce a transcript or to qualify for the production of a transcript at government expense, Stearns has waived review of the issues on appeal that depend upon the transcript to show error. *See generally* Fed. R. App. P. 10(b)(2); *Keller v. Prince George's Cty.*, 827 F.2d 952, 954 n.1 (4th Cir. 1987). As no error appears on the record before us, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED